No. 80-193 and No. 79-1943

(Consolidated)

IN THE

Supreme Court of the United States

October Term, 1980

HENRY BUCZYNSKI, *et al.*,

Petitioners,

v.

THE GENERAL MOTORS CORPORATION,

Respondent.

JOSEPH ALESSI, *et al.*,

Appellants,

v.

RAYBESTOS-MANHATTAN INC., *et al.*,

Appellees.

On Writ of Certiorari to and on Appeal from the United States Court of Appeals for the Third Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF AMICUS CURIAE ON BEHALF OF STEEL COMPANIES

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Allegheny-Ludlum Industries, Inc., Armco Steel Corporation, Bethlehem Steel Corporation, Crucible Inc., Inland Steel Corporation, Jones & Laughlin Steel Corporation, Mesta Machine Company, Pullman Standard, Republic Steel Corporation, Shenango Incorporated, United States Steel Corporation and Wheeling-Pittsburgh Steel Corporation (hereinafter referred to as "Steel Companies") respectfully move the Court for leave to file a brief *amicus curiae* in support of the position of Respondent General Motors Corporation and Appellee Raybestos-Manhattan Inc.

The Steel Companies are signatories to collective bargaining agreements with the United Steelworkers of America ("Steelworkers") which contain a pension benefit computation formula providing for the integration and coordination of pension benefits with workmen's compensation benefits under certain specified circumstances. This particular feature of the Steel Companies pension plans is a longstanding practice in the steel industry. It is the result of arms length collective bargaining and it coordinates the receipt of pension benefits with other employer-funded benefits.

As signatories to such collective bargaining agreements, the Steel Companies have a direct and compelling interest in the issue presented in this case. If the Appellants and Petitioners succeed in convincing this Court that the integration of pension benefits with workmen's compensation benefits violates Section 203(a) of ERISA, this holding would effect the agreements reached between the Steel Companies and the Steelworkers which provide for such integration, as well as other integration provisions of the pension plans. The Steel Companies have a vital and continuing interest in preserving

the integrity of the pension plans established by reason of the collective bargaining agreements reached between the Steel Companies and the Steelworkers.

Further, seven of the Steel Companies are defendants in seven civil actions similar to these actions in which the United States District Court for the Western District of Pennsylvania granted summary judgment in favor of the Steel Companies on the basis of the Third Circuit's decision in *Buczynski v. General Motors*. These cases are currently pending in the United States Court of Appeals for the Third Circuit.[1] The seven Steel Companies who are defendants in those actions participated as *amicus curiae* before the United States Court of Appeals for the Third Circuit in the *Buczynski v. General Motors* case.

The decision of the United States Court of Appeals for the Third Circuit correctly recognized that a benefit

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1. In the United States Court of Appeals for the Third Circuit, these cases have been briefed and argued on a consolidated basis. *Doumont v. Shenango Inc.*, Action No. 80-1857 (3d Cir.). By letter dated December 19, 1980, the Clerk for the United States Court of Appeals for the Third Circuit advised the parties that the Court had placed these cases on *curia advisari vult* status pending this Court's decision in these cases. In the district court, the seven civil actions were as follows: *Carmen F. Gargon v. Wheeling-Pittsburgh Steel Corporation*—Civil Action No. 78-1369H (W.D. Pa.); *Wayne C. Banks v. Crucible Inc.*—Civil Action No. 78-1370H (W.D. Pa.); *Robert Milanovich v. Jones & Laughlin Steel Corporation*—Civil Action No. 78-1368H (W.D. Pa.); *Paul J. Miller v. Pullman-Standard*—Civil Action No. 78-1433H (W.D. Pa.); *George Zihol v. Mesta Machine Company*—Civil Action No. 79-344H (W.D. Pa.); *Michael E. Barna v. U. S. Steel Corporation*—Civil Action No. 78-1371H (W.D. Pa.) and *Frank E. Doumont v. Shenango Inc.*—Civil Action No. 78-1367H (W.D. Pa.).

formula providing for the integration and coordination of pension benefits with workmen's compensation benefits is a longstanding practice and that the agencies charged with regulating pension plans, both pre-ERISA and post-ERISA, have repeatedly sanctioned the propriety of such integration. If this Court determines that the Third Circuit's decision is erroneous, the reliance of the Steel Companies and the Steelworkers upon the determination of the agencies charged with administering ERISA will be frustrated and the integrity and propriety of the existing collective bargaining agreements between the Steel Companies and the Steelworkers will be subject to question.

Thus, this Court's review of the decision of the United States Court of Appeals for the Third Circuit in *Buczynski v. General Motors* directly interests the Steel Companies.

Undersigned counsel for the Steel Companies has attempted to obtain consent to the filing of this brief pursuant to Supreme Court Rule 36. Counsel for the Respondent General Motors Corporation and for Appellee Raybestos-Manhattan Inc. have given such consent but counsel for Appellants and Petitioners have indicated that they would not consent to the filing of a brief *amicus curiae* by the Steel Companies.

WHEREFORE, the Steel Companies move this Court to allow the filing of the "Brief of Steel Companies as *Amicus Curiae* in Support of the Position of Respondent General Motors Corporation and Appellee Raybestos-

Manhattan Inc.," which is submitted herein with the requisite number of printed copies.

Respectfully submitted,

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BRIEF OF AMICUS CURIAE STEEL COMPANIES IN SUPPORT OF THE POSITION OF RESPONDENT GENERAL MOTORS CORPORATION AND APPELLEE RAYBESTOS-MANHATTEN INC.

Interest of Amicus Curiae Steel Companies

The interest of *Amicus Curiae* Steel Companies is described in the preceeding Motion For Leave To File Brief As *Amicus Curiae.*

SUMMARY OF ARGUMENT

This action raises critical and important issues concerning the freedom of parties to a collective bargaining agreement to tailor pension benefits to suit the needs of the parties and to integrate said benefits with other employer-funded benefits received by plan participants.

In this case, the United States Court of Appeals for the Third Circuit found that the provision in a pension plan benefit formula integrating the receipt of employer-funded pension benefits with employer-funded workmen's compensation benefits does not violate the minimum vesting standards of Section 203(a) of ERISA, 29 U.S.C. §1053(a).

In reviewing this determination and in analyzing the legality of integration, it should be kept in mind that a pension plan is a contract between the pension plan and the participants. *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234 (1978). Like any other contract, the pension contract sets forth the nature and the amount of benefits and the terms and conditions under which payment of benefits will occur. Here, the parties to a collective bargaining agreement, the companies and the unions, agreed on the establishment of pension plans with formulae for the determination and payment of benefits which included the integration and coordination of pension benefits with workmen's compensation benefits. In doing so, the companies and the unions agreed on formulae which attempted to equalize the total amount of benefits received by covered nonworking employees.

The specific provisions of the pension plans currently under attack provide for the integration of pension benefits with workmen's compensation benefits.

These provisions are part of a comprehensive scheme contained in many pension plans to coordinate the receipt of employer-funded benefits. As was explained in one of the early decisions which sanctioned the integration of pension benefits with workmen's compensation benefits as not violative of public policy:

> "What the plan actually amounted to, and no more, was a commitment by the company to see that each retired employee received a fixed amount of money monthly, to compensate partially for wages lost through inability to continue employment by reason of age, and that if such was not forthcoming in whole or in part from the specified sources, *i.e.,* public pension, other pension contributed to by the company, social security benefits, private or statutory severance pay and the like, workmen's compensation benefits from the company or any other employer or public disability pension, it would pay the computed amount or any deficiency. The scheme had no particular relation to compensation benefits. Its scope was much broader and the theory an infinitely deeper one." *Renshaw v. U.S. Pipe and Foundry Co.,* 153 A.2d 673, 678 (N.J. Sup. Ct. 1959).

One prominent commentator in the field of workmen's compensation law has described the necessity for coordination of benefits as follows:

> "97.10 *Impropriety of duplicate benefits*
>
> Wage-loss legislation is designed to restore to the worker a portion, such as one-half to two-thirds, of wages lost due to the three major causes of wage-loss: physical disability, economic unemploy-

ment, and old age. The crucial operative fact is that of wage-loss; the cause of the wage-loss merely dictates the category of legislation applicable. Now if a workman undergoes a period of wage-loss due to all three conditions, it does not follow that he should receive three sets of benefits simultaneously and thereby recover more than his actual wage. He is experiencing only one wage-loss and, in any logical system, should receive only one wage-loss benefit. This conclusion is inevitable, once it is recognized that workmen's compensation, unemployment compensation, nonoccupational sickness and disability insurance, and old age and survivors' insurance are all parts of a system based upon a common principle. If this is denied, then all coordination becomes impossible and social legislation becomes a grab-bag of assorted unrelated benefits." 4A. Larson, *The Law of Workmen's Compensation* §97.10 (1980).

In challenging the right of the parties to establish the amount of benefit through a formula which integrates pension benefits with workmen's compensation benefits, Appellants and Petitioners argue that the enactment of minimum vesting standards in Section 203(a) of ERISA foreclosed the parties to a collective bargaining agreement from integrating benefits. In doing so, Appellants and Petitioners confuse the concept of vesting with the process of benefit definition under a pension plan. The minimum vesting standards of ERISA cannot and should not be amalgamated with the concept of benefit definition. These are separate and distinct concepts. Vesting assures that, after a certain period of employment, employees receive that which was promised under the plan. It cannot and does not alter the promise of benefit which was made. Here the prom-

ise that was made was to provide a pension benefit which included integration with workmen's compensation. The minimum vesting standards cannot be read to impose additional contractual obligations upon an employer to which that employer never agreed. Vesting governs the employee's right to a pension but does not define the amount of the benefit.

As will be discussed *infra,* in failing to recognize the separate nature of vesting and benefit definition, Appellants and Petitioners would extend ERISA into an area which Congress reserved as the prerogative of the parties establishing a pension plan, *i.e.,* to establish the level of benefit which will be provided by the pension plan.

ARGUMENT

There are an infinite variety of formulae by which benefits can be determined under a pension plan. Certain formulae such as that which is at issue here take into consideration benefits from other sources which are financed in whole or in part by the pension plan sponsor. Integration of pension plan benefits with these other benefits is a function of the benefit definition process under the plan. Subject to certain limits applicable to integration with Social Security benefits,[2] integration of plan benefits with other benefits was permissible under pre-ERISA law and remains permissible under ERISA. Integration has not been explicitly or implicitly barred by ERISA's minimum standards relating to the separate

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2. See Section 206(b) of ERISA, 29 U.S.C. §1056 (b).

concept of vesting and remains, as prior to ERISA, a question of benefit definition.

1. Integration Of Pension Benefits With Workmen's Compensation Benefits Is Not Prohibited by Section 203(a) Of ERISA.

The Appellants and Petitioners maintain that ERISA changed prior law by establishing that the integration of pension plan benefits with workmen's compensation benefits operates as a forfeiture in violation of ERISA's minimum vesting standards, Section 203(a) of ERISA, 29 U.S.C. §1053(a).

On its face, Section 203(a) does not set forth any particular definition of benefits nor restrict the way in which benefits may be defined. Section 203(a) merely requires that after a certain period of service an employee's right to a pension cannot be lost even though his employment may be terminated. This is in accordance with the concept of vesting as it existed historically and as it was carried forward under ERISA.[3] Vesting is essentially a timing requirement; it establishes the time

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3. One noted authority explained the concept as follows:

> "In the context of a pension plan, vesting refers to the right of a participant to receive his accrued pension benefits at normal or early retirement whether or not he is in the service of the employer at that time. It is a more narrow concept than the strict legal concept of a vested right, since the right to a pension is contingent upon the employee's survival to the earliest date on which he can validly claim a pension. Thus, a vested pension benefit is terminated by the participant's death prior to normal or early retirement. The vesting of a benefit simply removes the obligation of the participant to remain in the plan until the date of early or normal retire-

after which there will be a right to a benefit without continued employment.[4]

This concept of vesting was recently confirmed by this Court when, in describing the term "nonforfeitable" as defined in ERISA, the Court, through Justice Stevens, noted as follows:

> ". . . the principal subject of the definition is the word 'claim'; it is the claim to the benefit, rather than the benefit itself, that must be 'unconditional' and 'legally enforceable against the plan.' . . . the term 'forfeiture' normally connotes a total loss in consequence of some event rather than a limit on the value of a person's rights. Each of the examples of a plan provision that is expressly described as not causing a forfeiture listed in §203(a)(3) [the exceptions to §203] . . . describes an event—such as death or temporary re-employment—that might otherwise be construed as causing a forfeiture of the entire benefit. It is therefore surely consistent with the statutory definition of 'nonforfeitable' to view it as describing the quality of the participant's

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ment." D. M. McGill, *Fundamentals of Private Pensions* (3d ed. 1975) at p. 130.

See also, G. B. Buck, Jr., "Features of Present-Day Plans," *Pension and Profit Sharing* (2d ed. 1956) at p. 27.

4. *See, Nachman Corp. v. Pension Benefit Guaranty Corp.,* 446 U.S. 359, at 377-78 and n.27 (1980). This is confirmed by ERISA's definition of nonforfeitable as a "*claim* obtained by a participant or his beneficiary to that part of an immediate or deferred benefit *under a pension plan* which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan." Section 3(19) of ERISA, 29 U.S.C. §1002(19). [Emphasis added.]

right to a pension rather than a limit on the amount he may collect." *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. at 371-73 (1980).

Thus, the existence of a right to a pension does not determine what that benefit will be. In utilizing integration, the company and the union have not caused a participant to forfeit his right to a pension because, if his or her pension payments would exceed the amount of workmen's compensation payments, the plan participant receives the excess.[5] Similarly, if the amount of workmen's compensation ceases or is diminished, the plan participant's pension benefits will correspondingly increase.[6] Thus, the plan participant's vested rights are not lost by the integration provision.

In challenging integration, Appellants and Petitioners mistakenly rely upon decisions in which an employee loses his or her right to a pension because of prohibited conduct. These decisions involve a total loss of the right to a pension regardless of the amount of that pension or how it is computed.[7] As such, it is not surprising that such a loss of a right to a pension has been held to be a

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5. This is, in fact, what happened in the case selected by the parties to be representative of the seven cases filed in the United States District Court for the Western District of Pennsylvania. See Stipulation dated July 2, 1979 in *Gargon v. Wheeling-Pittsburgh Steel Corp.*, Civil Action No. 78-1369H (W.D. Pa.)

6. This happens when a state workmen's compensation statute provides for benefits which have specific limitations, either monetary or temporal, or when an employee recovers from the disabling condition.

7. Appellants and Petitioners cite a number of decisions which have held it a prohibited forfeiture for an employee to be deprived of his right to a pension when he works for a competitor. *Riley v. MEBA Pension Trust,*

prohibited forfeiture. However, the strictures of ERISA prohibiting the loss of vested rights cannot be used to impose the payment of a particular level of benefits.

The right or claim which is vested under the plan is a right by the plan participant to receive "his normal retirement benefit." See Section 203(a). Section 3(22) of ERISA, 29 U.S.C. §1002(22), defines "normal retirement benefit" as the benefit determined "under the plan." Although the right or claim becomes vested, one still must determine the benefit *under the plan* to which that right attaches. Thus, ERISA recognizes the separate and distinct nature of vesting and benefit definition.

In challenging the concept of integration, Appellants and Petitioners ignore the fact that it is the *claim* to a benefit which is nonforfeitable. The benefits to which the claim applies must be determined according to the formula set forth in the plan. Instead, Appellants and Petitioners erroneously argue that, because their *claim* is nonforfeitable, they are entitled to have their benefit determined without reference to the terms of the plan which provides that the amount of pension benefits that are to be paid are to be integrated.

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570 F.2d 406 (2d Cir. 1977); *Keller v. Graphic Systems of Akron, Inc., Employees Profit Sharing Plan,* 422 F. Supp. 1005 (N.D. Ohio 1976); *Lewis v. Merrill, Lynch, Pierce Fenner & Smith,* 431 F. Supp. 271 (E.D. Pa. 1977); *Amory v. Boyden Associates, Inc.,* 434 F. Supp. 671 (S.D.N.Y. 1976). Appellants and Petitioners also rely upon certain "bad boy" cases in which an employee who engages in certain prohibited conduct is deprived of his pension. *Winer v. Edison Bros. Stores Pension Plan,* 593 F.2d 307 (8th Cir. 1979); *Fremont v. McGraw-Edison Co.,* 606 F.2d 752 (7th Cir. 1979) *cert. denied,* 100 S. Ct. 1599 (1980). In these cases, the employee has lost his right to any pension because of the prohibited conduct.

Argument.

In order to make this argument, Appellants and Petitioners must assume that any plan formula that requires a mathematical subtraction in a benefit computation results in a forfeiture. From this assumption, they argue that all forfeitures are prohibited by Section 203(a) of ERISA unless specifically exempted in Section 203(a)(3). Because workmen's compensation integration is not listed in Section 203(a)(3), they argue that such integration is prohibited.

The defect in this line of reasoning is that Appellants and Petitioners never adequately explain why this Court should assume that all reductions or subtractions in a benefit formula are necessarily forfeitures. In considering this assumption, the United States Court of Appeals for the Third Circuit carefully examined and correctly rejected the argument that benefit formula reductions are necessarily forfeitures. In doing so, the Third Circuit noted correctly that other sections of ERISA clearly recognize that benefit formula reductions are not necessarily forfeitures and that the governmental agencies charged with issuing regulations concerning ERISA have determined that integration is permissible under the statute.

In rejecting Appellants' and Petitioners' argument that benefit formula reductions are necessarily forfeitures, the United States Court of Appeals for the Third Circuit in *Buczynski v. General Motors Corp.*, 616 F.2d 1238 (3d Cir. 1980) carefully examined the statute to determine whether, as Appellants and Petitioners suggest, Section 203 was intended by Congress to prohibit any formula which provides a reduction or subtraction in computing the benefit to be paid. In Section 206(b) of ERISA, 29 U.S.C. §1056(b), Congress recognized that Social Security and Railroad Retirement benefits could

be integrated with pension payments but that future increases in Social Security and Railroad Retirement benefits could not be integrated.[8] If, as Petitioners and Appellants argue, all benefit formulae reductions constitute forfeitures, then Congress' enactment of Section 206(b) would be superfluous because all Social Security integration would be prohibited by Section 203(a). This indicates that Congress did not intend integration to be a forfeiture within the scope of Section 203. Thus, vested pension rights are exactly that, *i.e.*, a right to the benefit provided by the formula set forth in the plan, and not a right to receive specific amounts over and above that which is set forth in the plan.

Appellants and Petitioners argue that, after they have become entitled to a benefit by reason of retirement, the subsequent award of workmen's compensation benefits causes a reduction in the benefit being paid and that this is a forfeiture. The error in this argument is that a pension plan that is integrated contains, in effect, two basic benefit formulae, one for persons who have a compensable injury at the time of retirement and one for persons who do not. The determination of the class to which an individual retiree belongs, however, cannot be made until some time after the actual retirement of the individual due to the delay in processing workmen's compensation claims. It is important to recognize that the retiree was actually entitled to workmen's compensation at the time he retired. He therefore should never have received a benefit based upon a formula that did not

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8. It should be noted that the Social Security benefits which can be integrated under ERISA can include benefits payable for disabilities. See 42 U.S.C. §423. There is no meaningful difference between such disability benefits and workmen's compensation benefits.

integrate and coordinate with workmen's compensation benefits. The subsequent commencement of integration merely corrects the error made in misclassifying the retiree at the time of his retirement. This does not constitute a forfeiture.

In addition to reliance upon the carefully crafted statutory scheme which recognizes the separate nature of vesting and benefit definition, the Third Circuit also relied upon the explicit approval of workmen's compensation integration by the regulatory agency charged by Congress with issuing regulations concerning minimum vesting standards.[9] The Secretary of the Treasury has defined "nonforfeitable" to indicate that the benefit formula reductions pursuant to an integration provision in a plan does not result in a forfeiture.

> ". . . nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits." Treas. Reg. §1.411(a)-4, adopted August 22, 1977 by T.D. 7501.

In this regulation, the Secretary of the Treasury clearly recognized that integration of plan benefits, including

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9. Section 203 of ERISA, which is contained in Title I of ERISA, has a parallel provision in Title II of ERISA. See Section 1012 of ERISA, adding Section 411 to the Internal Revenue Code, 26 U.S.C. §411. Pursuant to Section 3002(c) of ERISA, 29 U.S.C. §1202(c), the regulations of the Secretary of the Treasury concerning Section 411 are also binding insofar as they involve the minimum vesting standards of Title I of ERISA, *i.e.*, Section 203.

integration with workmen's compensation, is part of the definition of benefits under a plan and not a forfeiture of a previously vested right. Because this is the agency charged with interpreting Section 203, it is entitled to great deference by this Court. *Bingler v. Johnson,* 394 U.S. 741, 749-751 (1969); *see also, Udall v. Tallman,* 380 U.S. 1, 16 (1965). As a legislative regulation, the Secretary of the Treasury's determination can be set aside only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Batterton v. Francis,* 432 U.S. 416, at 424-26 (1977); *General Motors Corp. v. Buha,* 623 F.2d 455 (6th Cir. 1980); *Baker v. Otis Elevator,* 609 F.2d 686 (3d Cir. 1979).

Similarly, the Pension Benefit Guaranty Corporation ("PBGC"), an autonomous corporation established within the Department of Labor by Title IV of ERISA to guarantee the payment of nonforfeitable benefits to participants of terminated plans, has recognized that integration with workmen's compensation does not result in a forfeiture. PBGC has described the type of nonforfeitable benefits which it will guarantee as follows:

> " 'Pension benefit' means a benefit payable as an annuity, or one or more payments related thereto, to a participant who permanently leaves or has permanently let (sic) covered employment, or to a surviving beneficiary, which payments by themselves or in combination with Social Security, Railroad Retirement, or workmen's compensation benefits provide a substantially level income to the recipient." 29 C.F.R. §2605.2 (1980).

Moreover, beyond the statute and the Secretary of the Treasury's and PBGC's specific regulations on the

subject, an understanding of the nature of vesting makes obvious that the integration of workmen's compensation benefits in the definition of the pension benefit to which a participant is entitled is not a forfeiture of vested rights. One cannot forfeit the right to something one never had. Vesting operates with respect to the right to receive benefits due and payable *under the plan*. Under an integrated formula there is never a right to receive a benefit determined without regard to integration.

Integration is part of the plan's benefit formula, *i.e.*, the determination of the amount of benefit, and not something applied after a participant's benefits have been ultimately determined. At any time of reference the integration provision applies, *i.e.*, the benefit is always subject to integration with workmen's compensation. The timing of when the affected participant applies for and actually receives workmen's compensation merely establishes the point in time when the integration part of the plan benefit formula becomes operative. No taking away or "forfeiture" of benefits occurs, since there never was an entitlement to receive a benefit determined without regard to workmen's compensation. To assume that by reason of the integration of workmen's compensation in the determination of a plan benefit a forfeiture has occurred is to begin at the wrong end. The real beginning point is to ask what the plan has promised the participant in terms of a benefit. The plan is giving a benefit determined by reference to, *inter alia,* workmen's compensation. This is the benefit which has "accrued" and with respect to which the participant's rights are nonforfeitable at his or her normal retirement date.

In a recent decision, the United States Court of Appeals for the Sixth Circuit confused a forfeiture of a

right with the operation of integration. *Utility Workers Union v. Consumers Power Co.*, Pens. Rep. No. 325 (BNA) D-1 (6th Cir. Jan. 6, 1981), *petition for recon. en banc pending*. Without even addressing the reasoning of the Third Circuit in *Buczynski*,[10] Judge Peck in *Utility Workers* reasoned that the "central question presented on appeal" was "Are worker's compensation benefits and social security benefits 'like' benefits for purposes of ERISA?" Pens. Rep. No. 325 (BNA) at D-4. This is not the central question.

Rather, the inquiry must be whether Section 203(a) of ERISA forbids workmen's compensation integration. The significance of the explicit approval of Social Security integration in ERISA is not, as Judge Peck argues in his opinion in *Utility Workers*, that Congress impliedly intended to exempt "like" benefits from the reach of Section 203(a). Actually, the point is that Congress did not need to exempt Social Security integration under Section 203(a)(3) because it did not intend to treat all mathematical reductions in plan benefit formula as forfeitures. As noted by Judge Garth in *Buczynski*, 616 F.2d at 1246-1247, the lack of an exemption for Social Security integration indicates that Congress never intended integration to be a forfeiture.

The decision in *Utility Workers* also places great reliance upon the fact that pension and Social Security benefits "are earned on account of years of service" and

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10. This was noted by Judge Engel in his dissenting opinion in *Utility Workers* where he stated that "the majority opinion fails to refute the reasoning of Judge Garth and his recognition that workmen's compensation is in very real measure much like social security in the breadth of its coverage. *See Buczynski v. General Motors Corp., supra*, 616 F.2d at 1246-47." Pens. Rep. No. 325 (BNA) at D-6.

that workmen's compensation benefits are not. This line of reasoning ignores the fact that pension plans can and do provide benefits regardless of years of service. For example, pension plans can define the benefit as a percentage of wages received in the last years of service. Further, the vesting standards of ERISA are minimum standards. A plan can provide vesting earlier than that required by ERISA, even for that matter when employment commences. Frequently, for example, the disability features of a pension plan are made available to employees prior to the minimum number of years for vesting set forth in Section 203. Thus, it is erroneous to suggest that these benefits are different because pension payments are derived from years of service and workmen's compensation payments are not. More importantly, all of these benefits are derived from a common source, the employment relationship. It is the employment relationship which gives rise to the right to benefits.

The analysis of the Sixth Circuit in *Utility Workers* is subject to yet another defect. The Sixth Circuit, following the Third Circuit in *Buczynski,* recognized that Treas. Reg. §1.411(a)-4 was a valid regulation. It claimed, however, that the revenue rulings which applied the principles of this regulation to the workmen's compensation offset provisions were incorrect interpretations of this regulation. In so doing, the Sixth Circuit mistakenly concluded that it, rather than the Treasury Department, was in a better position to interpret Regulation §1.411(a)-4. Moreover, in finding inconsistency between the regulation and the revenue rulings, the Sixth Circuit totally ignored the section of the regulation which specifically authorized integration of *all* federal and state statutory benefits:

> ". . . nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act *or under any other Federal or State law* and which are taken into account in determining plan benefits." Treas. Reg. §1.411(a)-4. [Emphasis added.]

It is difficult to see how the revenue rulings permitting integration of pension benefits with workmen's compensation benefits are inconsistent with the above-quoted language which clearly includes workmen's compensation laws.

In reviewing the *Utility Workers* decision carefully, it would appear that the real reason for Judge Peck's decision is his perception that, if workmen's compensation integration is sanctioned, there will be a potential for abuse (Pens. Rep. No. 325 (BNA) at D-2) and that it would be inequitable for an injured and a non-injured worker to receive the same combined workmen's compensation and pension payments (Pens. Rep. No. 325 (BNA) at D-5-D-6). In expressing these concerns, Judge Peck ignores the fact that in that case, as well as in the case before this Court, the workmen's compensation integration provision is the result of collective bargaining and that the Secretary of the Treasury has determined that "[o]nly those programs which provide benefits that may be provided under a qualified pension plan may be used as an offset since only then could a correlated retirement system exist."[11] Judge Peck also ignores the obvious realities of the situation in that integration permits a higher level of integrated benefits to all employees at the same cost to the employer. Because the plan is a

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11. See Rev. Rul. 78-178, 1978-1 C.B. 117.

product of collective bargaining, a union should be able to agree that pension payments can be directed to those employees who do not receive similar payments from other sources. *See, Ford Motor Co. v. Huffman,* 345 U.S. 330 (1953). It is the parties to collective bargaining who are best able to tailor the type and amount of benefits which are best suited to their needs.[12] Misguided judicial notions of "fairness" cannot obscure the fact that Congress never intended to regulate the level of benefits to be provided under a plan.

While Section 203 of ERISA does require that certain rights be vested after certain periods of time, nothing in ERISA regulates the level of benefits to be provided. Analytically, integration is no different than the establishment of the level of benefits to be provided in the first place.[13]

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12. Judge Peck's concern for the inequity of a healthy and an injured employee receiving the same combined pension and workmen's compensation benefits also ignores the fact that, as a result of the collectively bargained package of benefits, an employer and a union can agree to provide other benefits for injured workers such as, for example, disability insurance and/or medical benefits.

13. Appellants and Petitioners, and those filing *amicus curiae* briefs on their behalf, repeatedly suggest that pension payments are a form of deferred compensation. While this is true in the sense that the creation and funding of the pension plan is part of the agreement between the company and the union and pension payments are not received by the employees at the time they are rendering services to the employer, the concept of deferred compensation cannot be stretched to the lengths suggested by Appellants and Petitioners. Unlike wages, pension plans have an insurance aspect in that they provide for the payment of certain benefits upon the happening of certain events, such as the fulfillment of particular lengths of service with the employer or

2. Integration Was A Function Of Benefit Definition Prior To ERISA And Was Then And Is Now Clearly Legal.

Prior to the enactment of ERISA, integration as part of the benefit definition process was well-recognized and accepted. The main area of concern in which integration was examined was the integration of pension benefits with Social Security benefits. Under pre-ERISA law, there were minimum standards for the integration of pension plan benefits with Social Security benefits to achieve favorable federal income tax treatment.[14] Indeed, integration of pension plan benefits with Social Security benefits began with the enactment of the nondiscrimination rules under the Revenue Act of 1942.[15]

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the occurrence of an occupational disease or disability. If a plan can provide for the payment of benefits under certain conditions and upon certain terms, it follows logically that a plan can integrate benefits.

14. Of interest to the question presented here concerning integration of pension payments with workmen's compensation benefits are the decisions in *Richardson v. Belcher,* 404 U.S. 78 (1971) and *Lofty v. Richardson,* 440 F.2d 1144 (6th Cir. 1971), *cert. denied,* 404 U.S. 985 (1971) in which this Court and the Sixth Circuit upheld an offset of Social Security benefits for workmen's compensation payments. The provision of the Social Securities Act requiring the offset of workmen's compensation benefits is still in effect. See 42 U.S.C. §424a. This offset is in principle equivalent to that involved here. The Supreme Court in *Richardson v. Belcher* cited and relied upon legislative history indicating Congress' concern for the necessity to avoid overlapping of benefits. 404 U.S. at 82.

15. Section 162 of the Revenue Act of 1942, Pub.L. No. 753, ch. 619, 56 Stat. 798, amended Section 165 of the Internal Revenue Code of 1939 to establish standards whereby qualified pension plans could be designed to

From the very first pronouncements on the subject by the Internal Revenue Service, integration was treated as a function of benefit definition and benefit accrual, not as a function of vesting.[16]

The separate nature of vesting and benefit definition was the rationale of a widely cited decision on the integration of pension plan benefits with Social Security benefits which recognized the legality of such integration. *Hurd v. Illinois Bell Telephone Co.*, 136 F.Supp. 125 (N.D. Ill. 1955), *aff'd*, 234 F.2d 942 (7th Cir. 1956), *cert. denied sub nom. Seybold v. Western Electric Co.*, 352 U.S. 918, *reh. denied sub nom. Seybold v. Western Electric Co.*, 352 U.S. 977 (1957). In affirming the district court, the United States Court of Appeals for the Seventh Circuit specifically rejected plaintiff's claim of a vested right to benefits exclusive of the pension plan provision integrating pension plan benefits with Social Security benefits:

> "The first major contention of plaintiffs largely depends upon just what the right is which vests in an employee upon his retirement in accord with the plan. Such an employee receives only a right to receive a monthly pension, not in a specified amount,

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supplement Social Security benefits as long as the plan was not discriminatory in favor of certain persons such as officers and shareholders. H. R. Rep. No. 2333, 77th Cong., 2d Sess. (1942) at 103-104; S. Rep. No. 1631, 77th Cong., 2d Sess. (1942) at 137. The reason that Congress had to address integration with Social Security was that, should a plan integrate with Social Security, the plan would provide greater benefits to the higher paid, which, absent action by Congress, could have made such plans discriminatory under the newly-enacted law.

16. Internal Revenue Service Mimeograph 5539, 1943 C.B. 499.

> but in an amount computed in accord with the provisions and conditions of the whole contract." 234 F.2d at 946.

Thus, the Court recognized that an employee had no vested right to pension plan benefits in an amount over and above that set forth in the plan instrument which included integration. The same rationale applies here.

Further, prior to ERISA's passage, the Internal Revenue Service had had in effect for some time Treas. Reg. §1.401-3(e)(2) which expressly dealt with the integration of pension plan benefits with Social Security benefits.[17] In Rev. Rul. 71-446, 1971-2 C.B. 187, the Service interpreted Treas. Reg. §1.401-3(e)(2) and set forth approved methods of integration of pension plan benefits with Social Security benefits.[18]

In addition to the preceding, and contrary to the suggestion of Appellants and Petitioners that the enactment of ERISA in 1974 initiated vesting, limited vesting requirements existed under administrative pronouncements by the Internal Revenue Service prior to ERISA.

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17. Adopted September 24, 1956 by T.D. 6203 and amended January 21, 1960 by T.D. 6447, September 16, 1963 by T.D. 6675, November 12, 1968 by T.D. 6982 and July 21, 1971 by T.D. 7134.

18. Rev. Rul. 71-446, *supra,* has been continued in effect (with minor modifications not here relevant) since ERISA's enactment. Rev. Rul. 75-480, 1975-2 C.B. 131; Rev. Rul. 76-76, 1976-1 C.B. 106; Rev. Rul. 78-92, 1978-1 C.B. 118. This is significant since the separate vesting and benefit accrual rules of Title I of ERISA, Sections 203 and 204, 29 U.S.C. §1053 and 1054, were also added in substantially identical terms to the qualification requirements in Title II of ERISA in new Sections 411(a) and (b) of the Code, 26 U.S.C. §411(a) and (b).

These pronouncements covered the subject of discrimination within the meaning of the Internal Revenue Code, and, while such discrimination is not an issue in this case, the pronouncements never considered integration of a plan benefit formula to cause a forfeiture with respect to then extant vesting requirements.[19] This is because integration was regarded as part of benefit definition and not vesting.[20] Vesting was a separate concept and operated wholly apart from the determination of the benefit amount which determination was pursuant to the plan benefit formula, integrated or not.

ERISA, a statute of minimum standards, carries forward these rules on integration of pension plan benefits with Social Security benefits.[21] As described *infra,* ERISA and particularly Section 203(a) set no minimum

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19. In Rev. Rul. 68-243, 1968-1 C.B. 157, the Service ruled that pension plan benefits were not discriminatory simply because they are integrated with workmen's compensation. This was without regard to the plan vesting schedule, if any.

20. In Rev. Rul. 70-371, 1970-2 C.B. 85, the Service permitted integration of an amount contributed to a profit-sharing plan by the same employer to its concurrent pension plan. However, in Rev. Rul. 69-502, 1969-2 C.B. 89, the Service had taken the position that a pension plan could not qualify under the federal income tax law if it was integrated with the same employer's profit-sharing plan by means of a benefit offset. After ERISA, the Service issued Rev. Rul. 76-259, 1976-2 C.B. 111, superseding Rev. Rul. 69-502, *supra,* holding *inter alia* that such integration was permissible and announcing that the regulation which Rev. Rul. 69-502 had been interpreting would be modified to allow a broader scope for permissible integration.

21. See Section 206(b) of ERISA, 29 U.S.C. §1056(b) and I.R.C. §401(a)(5), 26 U.S.C. §401(a)(5).

standards for other forms of benefit formula integration, including integration with workmen's compensation.

3. The Legislative History of ERISA Indicates That Congress Continued In Effect Prior Law Concerning Integration.

In examining the legislative history of ERISA, one finds that Congress recognized and continued in effect under ERISA the concepts of vesting, benefit definition and benefit accrual as they existed in prior law. As discussed *supra,* the concept of vesting existed prior to ERISA to establish the point in time after which there was a right to a benefit without continued employment. The legislative history reveals that, in enacting Section 203(a) of ERISA (minimum vesting standards), all Congress intended was to accelerate the point in time at which vesting occurred by establishing minimum time schedules for vesting and rules for the crediting of service[22] and by eliminating forfeitures of previously vested rights by reason of noncompetition clauses and so-called "bad boy" clauses.[23]

Congress did not need to speak of the integration of pension plan benefits, including integration with work-

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22. H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. (1974) at 267-273; H.R. Rep. No. 93-779, 93d Cong., 2d Sess. (1974) at 18-19, 51-59; H.R. Rep. No. 93-533, 93d Cong., 1st Sess. (1973) at 5-6; H.R. Rep. No. 93-807, 93d Cong., 2d Sess. (1974) at 53-60; S. Rep. No. 93-383, 93d Cong., 1st Sess. (1973) at 44-50; S. Rep. No. 93-127, 93d Cong., 1st Sess. (1973) at 20-21, 39.

23. H.R. Rep. No. 93-779, 93d Cong., 2d Sess. (1974) at 59; H.R. 93-807, 93d Cong., 2d Sess. (1974) at 60; S. Rep. No. 93-383, 93d Cong., 1st Sess. (1973) at 49-50.

men's compensation benefits, under the vesting rules because Congress knew that it was general knowledge, law and practice in the area of private pensions that the integration of pension plan benefits with other benefits was a function of benefit definition. Congress addressed benefit integration in the accrual and benefit definition sections of ERISA and not in the minimum vesting section.[24]

Nowhere in the legislative history of ERISA does Congress speak of eliminating integration in general, or integration with workmen's compensation in particular, as a minimum standard under ERISA. Congress expressly considered the question of the extent of integration of pension plan benefits with Social Security benefits during its consideration of the various bills which were eventually to become ERISA. Except for establishing certain minimum standards for integration of pension benefits with Social Security benefits, Congress decided to defer more comprehensive changes for further study.[25] In addition to the provisions in ERISA which ban the reduction of accrued benefits of retired or terminated participants by reason of subsequent increases in Social Security benefits,[26] the bill as reported

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24. See Section 204(b)(1)(A), (B)(iv) and (C), 29 U.S.C. §1054(b)(1)(A), (B)(iv) and (C), and Section 206(b), 29 U.S.C. §1056(b).

25. *E.g.* H.R. Rep. No. 93-779, 93d Cong., 2d Sess. (1974) at 28-29, 67-68; H.R. Rep. No. 93-807, 93d Cong., 2d Sess. (1974) at p. 29 and 69.

26. Section 206(b) of ERISA, 29 U.S.C. §1056(b).

by the Conference Committee actually contained a provision[27] which would have frozen integration of plan

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27. "REQUIREMENT OF NO FURTHER SOCIAL SECURITY INTERGRATION IN EXCESS OF CERTAIN LIMITS.—

(1) A pension, profit-sharing, or stock bonus plan shall be treated as not meeting the requirements of section 401(a)(3)(B) or (4) of the Internal Revenue Code of 1954, or section 401(d)(6) of such Code (or, after the effective date of the amendments made by section 1016 of this Act, section 401(a)(3), section 401(a)(4), section 401(d)(6), or section 410 of such Code) if it does not meet the requirements of Revenue Ruling 71-446 without taking into account any amendment made to title II of the Social Security Act after December 31, 1971.

(2) Paragraph (1) shall not apply to any plan which met the requirements of such revenue ruling on June 27, 1974, unless—

(A) the plan is amended after that date to take into account a greater level of benefits or a greater wage base under such title II, or

(B) such plan takes into account a greater level of benefits or a greater wage base than that in effect under such title on June 27, 1974 (and, for purposes of this subparagraph, the level of benefits is determined without regard to any increase therein under section 215 of the Social Security Act after that date, and the wage base is determined without regard to any increase therein under section 230 of that Act).

If it is necessary to amend the plan in order for the provisions of subparagraph (B) not to apply to it, a plan will be treated as a plan not described in subparagraph (B) if the necessary amendment is made not later than June 30, 1975, and applies to the period beginning on January 1, 1975.

(3) This subsection takes effect on the date of enactment of this Act and ceases to be effective on July 1, 1976."

H.R. Conf. Rep. No. 93-1280, 93rd Cong., 2d Sess. (1974) at 131-132.

benefits with Social Security benefits at 1971 levels for two years pending further Congressional study of the question.[28] Congress deleted this freeze in integration levels from the final legislation by means of a joint resolution of Congress[29] because there was serious doubt as to its cost impact on private pensions.[30] What Congress intended was to adjust the permissible level of Social Security integration without regard to the new vesting rule which it was imposing. One must infer from this that Congress surely did note equate integration with a forfeiture. Thus, to construe Section 203(a) as barring all forms of integration is to bring about a result clearly not intended by Congress.

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28. *Ibid.*, at 280-281. It should be noted that, even in this proposal to regulate integration which was later deleted, Congress did not treat integration as having anything to do with the minimum vesting standards which it was imposing. See Section 1012 of ERISA, adding Section 411 to the Internal Revenue Code, 26 U.S.C. §411, which is the Title II counterpart to Section 203. Rather, the proposal was to amend the non-discrimination rules embodied in Section 401 of the Code, 26 U.S.C. §401. Similarly, in banning the integration of future increases in Social Security and Railroad Retirement benefits, Congress embodied these requirements in Section 206 of ERISA, 29 U.S.C. §1056, relating to the form and payment of benefits, not in any of the vesting requirements. This is further evidence that Congress recognized the separate nature of vesting and benefit definition.

29. H.R. Con. Res. 609, reproduced in Committee on Labor and Public Welfare, 93d Cong., 2d Sess. (1974), *Legislative History of Employee Retirement Income Security Act of 1974*, at 4722-4730. See section 2(17) at 4727.

30. *Ibid.*, at 4732 (remarks of Senator Williams).

Further, prior to and following the enactment of ERISA in 1974, the Secretary of the Treasury had non-discrimination rules for the qualification of a plan for favorable tax treatment. In Rev. Rul. 68-243, 1968-1 C.B. 157, the Secretary recognized that pension benefits were not discriminatory simply because they were integrated with workmen's compensation. In enacting ERISA, Congress stated that it was aware of these existing anti-discrimination rules and that the Secretary's anti-discrimination rules were not to be changed. In the Conference Committee Report accompanying ERISA, the Conference Committee noted as follows:

> "Moreover, the conferees intend that the antidiscrimination rules of present law in areas other than the vesting schedule are not to be changed. Thus, the present antidiscrimination rules with respect to coverage, and with respect to contributions and benefits are to remain in effect. Also, the antidiscrimination rules may be applied with respect to benefit accruals." H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. (1974) at 277.

It should be noted that these non-discrimination rules have been reaffirmed by the Secretary following the enactment of ERISA. See Rev. Rul. 78-178, 1978-1 C.B. 117.

Similarly, the legislative history of ERISA indicates that Congress intended the minimum vesting rules which it was adopting to apply to benefits accrued prior to the effective date of ERISA.[31] Thus, an employee with ac-

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31. H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. (1974) at 275; see also S. Rep. No. 93-383, 1st Sess. (1973) at 21.

crued benefits based upon pre-1974 service would become vested if he had the minimum number of years set forth in Section 203. Under Appellants' and Petitioners' line of reasoning, such an employee would not only have his right to a pension vested but also would be entitled to his pension without the use of integration *i.e.,* his accrued benefit would be increased. This would happen even though the parties had specifically agreed upon an integrated benefit and the funding obligations of the plan sponsor had been determined on the basis of an integrated formula. Yet, in the thousands of pages of legislative history of ERISA, Congress never indicated that it intended the minimum vesting standards to alter the amount of pension to be received. Indeed, in considering Social Security integration, Congress was very careful to avoid imposing increased costs upon pension plans:

> "... your committee is very much aware that many present plans are fully or partly integrated and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the rate of growth of private retirement plans." H.R. Rep. No. 93-779, 93d Cong. 2d Sess. (1974) at 29; *See also, Id.* at 67-68; H.R. Rep. No. 93-807, 93d Cong., 2d Sess. (1974) at 29 and 69.

To accept Appellants' and Petitioners' argument will necessarily mean that pension costs will be increased. In explicitly dealing with Social Security integration, Congress refused to impose such additional costs without further study. Congress surely did not implicitly impose such costs—by impliedly prohibiting workmen's compensation integration.

CONCLUSION

The basic purpose of ERISA is to establish minimum standards for private pension plans to assure that employees receive that which is promised by their employer concerning their pension. ERISA does not tell an employer what that promise must be or even require any promise in the first place.

The minimum standards of ERISA concerning vesting assure that, after certain periods of employment, an employee's right becomes vested in the pension that was promised him regardless of whether or not he continues in employment. The amount and type of benefits which are to be paid are set forth in the plan. Except for the requirement that the plan not discriminate in favor of officers, shareholders or the highly compensated,[32] nothing in ERISA requires a particular level or type of benefit.

In the instant case, the companies and the unions agreed upon a plan benefit formula which included the integration of pension plan benefits with workmen's compensation benefits. This decision was arrived at through collective bargaining and reflects the judgment of the parties as to the types of pension payments best suited to their needs. Nothing in ERISA forecloses this type of agreement.

Integration of pension benefits with workmen's compensation benefits was and is, at all times, a function of the benefit definition process under a plan. To hold that the minimum vesting standards of ERISA, which protect an employee's right to a pension, can in-

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32. See Section 401(a)(4) of the Internal Revenue Code, 26 U.S.C. §401(a)(4).

validate a specific part of the plan's definition of benefits agreed to between the parties is to rewrite the pension plan. The argument of Appellants and Petitioners confuses the vesting of a right with the nature of the benefit to which the right attaches. Rules concerning vesting cannot be used to increase the benefits to which a plan participant is entitled.

For all of the foregoing reasons, the judgment of the United States Court of Appeals for the Third Circuit should be affirmed.

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